

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

BOIES SCHILLER FLEXNER LLP,

*Petitioner,*For an Order Pursuant to Article 75 of the
CPLR Confirming an Arbitration Award

-against-

MILES KWOK *a/k/a* GUO WENGUI,*Respondent.*

Index No.

**VERIFIED PETITION TO
CONFIRM ARBITRATION
AWARD**

Petitioner Boies Schiller Flexner LLP (the “Firm” or “BSF” or “Petitioner”), as and for its petition to confirm an arbitration award against Miles Kwok *a/k/a* Guo Wengui (the “Respondent” or “Kwok”), alleges as follows:

1. This matter arises from Kwok’s refusal to pay more than a million dollars in outstanding legal fees owed to the Firm for defending Kwok’s interests in five separate litigations.

2. The Firm represented Kwok’s interests from May through December 2017. Despite the significant time and resources the Firm devoted to this representation, however, Kwok refused to pay any of the Firm’s legal bills as required under the parties’ Engagement Letter dated June 23, 2017 (the “Engagement Letter”).

3. Left with no choice, the Firm initiated arbitration proceedings pursuant to the Engagement Letter. The proceedings were held in New York before Hon. Frank Maas, sitting as arbitrator, pursuant to the JAMS Comprehensive Arbitration Rules and Procedures. Following a pair of hearings and several rounds of briefing, JAMS informed the parties on October 8, 2018

that the final arbitration award would be issued once each side paid their share of an outstanding balance — approximately \$700 for each party. While the Firm promptly made its payment, Kwok refused to pay for more than a month, forcing the Firm to pay on his behalf. Finally, on November 9, 2018, JAMS released Judge Maas' Final Arbitration Award (dated October 6, 2018). A copy of this Final Arbitration Award ("Final Arbitration Award") is attached as Exhibit A to the Affirmation of Joshua I. Schiller ("Schiller Affirmation"), submitted herewith.

4. Petitioner now seeks, pursuant to CPLR § 7510, an Order (a) confirming the arbitration award in *Boies Schiller Flexner LLP v. Miles Kwok* (JAMS Commercial Arbitration Case No. 1425025643) ("Arbitration Proceedings") and (b) granting judgment in favor of BSF, in accordance with the Final Arbitration Award dated October 6, 2018 issued in the Arbitration, in the total amount of \$639,282.84 consisting of:

- (i) legal fees still owed by Respondent to Petitioner for work performed on behalf of Respondent in five separate litigations in the amount of \$513,133.83,
- (ii) interest due on Respondent's unpaid legal fees through September 7, 2018 in the amount of \$113,552.61, and
- (iii) accrued interest from September 8, 2018 through the date of payment—as of November 9, 2018, this amounted to an additional \$12,596.40 in interest.

Petitioner also seeks, as part of this confirmation proceeding, to recover from Kwok the \$721.71 that the Firm was forced to pay on his behalf to release the Final Arbitration Award. In total, therefore, Petitioner seeks to confirm an award of \$640,004.55.

PARTIES

5. Petitioner Boies Schiller & Flexner LLP is a limited liability partnership with its principal place of business in New York, New York.

6. Respondent Miles Kwok a/k/a Guo Wengui is a billionaire and Chinese national who fled the People's Republic of China ("PRC") and currently resides at The Sherry Netherland, 751 5th Avenue, New York, New York, 10022.

JURISDICTION

7. Per Article 75 of the New York Civil Practice Law & Rules, this Court has jurisdiction to confirm an arbitration award if the application to do so is timely. The Firm has initiated this proceeding less than one year after JAMS released Judge Maas' Final Arbitration Award, so the application is timely per CPLR § 7510.

BACKGROUND

The Firm's Representation

8. Kwok, who says he made his fortune in real estate, claims he fled China in 2015 in fear of persecution by the Communist Party and the PRC's state-controlled media. Since leaving the PRC, and particularly in 2017, Kwok has widely asserted claims concerning corruption within the PRC, often accusing individuals or institutions within the PRC through statements released on his social media accounts.

9. In May 2017, Kwok approached the Firm to defend him against a breach of contract action in New York state court involving a complicated Chinese real estate dispute. An Engagement Letter was signed in June 2017. A copy of the Engagement Letter is attached as Exhibit B to the Schiller Affirmation, submitted herewith.

10. By the time the Engagement Letter was signed, two other law suits had been filed against the Client in New York state court with respect to which the Firm also agreed to represent Kwok. The Firm's representation of Kwok subsequently expanded to cover five lawsuits pending against the Client simultaneously (the "Representation").

11. The Engagement Letter provided that the Firm would send, and Kwok would pay, monthly invoices to Kwok for work performed and expenses incurred in the course of the Representation. Additionally, the Engagement Letter required Kwok to furnish a retainer in the amount of \$500,000 ("Retainer"), which could be applied to any outstanding and unpaid bills, and which Kwok agreed would be "replenished promptly" if it were so applied.

12. Kwok paid the Retainer, but never paid any of the outstanding monthly invoices that the Firm sent for work performed on his behalf over the course of the Firm's 8-month Representation, and never replenished the retainer.

13. Kwok terminated the Representation on December 11, 2017. Ultimately, at a December 21, 2017 meeting in Kwok's apartment to discuss the transition of cases and outstanding fees, it was agreed that the Parties would submit the dispute over unpaid fees to arbitration consistent with the Engagement Letter.

14. When Kwok terminated the Firm's Representation, he had amassed \$1,050,845.63 in unpaid legal fees. Additionally, Kwok had not reimbursed the Firm for \$12,287.75 in expenses and fees that BSF had incurred during the process of transitioning the cases to Kwok's replacement counsel. In total, Kwok owed the Firm \$1,063,133.38. Applying the half-million dollar retainer, the remaining amount due from Kwok was \$563,133.38.

15. Kwok subsequently retained new counsel to replace BSF on all the cases. One of his replacement counsel also represented him in the Arbitration Proceedings. On information and belief, Kwok was and is paying the fees for these new firms. Additionally, the *New York Times* reported in January 2018 that Kwok has "claimed to be amassing a 'war chest' of \$150 million to cover his legal expenses." Lauren Hilgers, *The Mystery of the Exiled Billionaire Whistle-Blower*, The New York Times (Jan. 10, 2018).

The Arbitration

16. On January 23, 2018, the Firm commenced the Arbitration Proceedings pursuant to its Engagement Letter with Kwok, seeking to recover its unpaid legal fees, expenses, and outstanding interest thereon. Per the Engagement Letter, the Firm sought to arbitrate pursuant to the most current JAMS Comprehensive Arbitration Rules and Procedures. Hon. Frank Maas presided as arbitrator. A copy of the Demand for Arbitration Form from JAMS is attached as Exhibit D to the Schiller Affirmation, submitted herewith.

17. On February 28, 2018, Kwok responded to the Firm's demand and submitted a set of counterclaims seeking, among other things, the refund and return of his half-million dollar retainer.

18. Following several rounds of briefing, an evidentiary hearing, and a post-briefing oral argument, Judge Maas indicated that he was ready to issues a final arbitration award. Before JAMS would release the decision, however, it required both the Firm and Kwok to pay their respective outstanding invoices — amounting to approximately \$700 per party. The Firm promptly paid its share. Kwok, however, never paid his outstanding invoice. Instead, after waiting for a month, the Firm ultimately paid the outstanding amount — by then increased to \$721.71 — on behalf of Kwok to release the Final Arbitration Award.

19. Once the Firm satisfied both parties' obligations, JAMS sent the Final Arbitration Award to the parties via an email from JAMS Assistant Manager Kristen L. Maccubbin, on behalf of Judge Maas, on November 9, 2018. A copy of the cover email from Ms. Maccubbin is attached as Exhibit C to the Schiller Affidavit, submitted herewith.

20. In the Final Arbitration Award, Judge Maas determined that (a) the Engagement Letter applied to all five litigations that the Firm handled at Kwok's request, (b) Kwok was not

entitled to a refund of his Retainer, and (c) Kwok owed the Firm more than a half-million dollars in outstanding fees and expenses *in addition to* the portion of unpaid fees to which the Firm could apply the Retainer.

21. Consequently, Judge Maas determined that “(A) Boies Schiller may apply Kwok’s \$500,000 retainer against his unpaid legal bills; (B) Boies Schiller is entitled to an additional award of \$626,686.44, consisting of \$513,133.83 in unpaid legal fees and an additional \$113,552.61 in interest on each of Kwok’s unpaid bills through September 7, 2018; (C) Boies Schiller is further entitled to recover interest on each of Kwok’s unpaid bills from September 8, 2018, through the date of payment at the rate of one percent per month, compounded monthly; and (D) Kwok’s counterclaim and any further relief sought by either party are denied.” (Ex. A, Schiller Affirmation at 16.)

22. From September 8, 2018 to the date of this Verified Petition, two months have passed, meaning that the Firm is entitled to recover *at least* another two months of interest “at the rate of one percent per month, compounded monthly.” Meaning that the Firm is entitled to recover an additional \$12,596.40, at least, bringing the total Final Arbitration Award to \$639,282.84.

23. Together with the \$721.71 fee that the Firm paid on Kwok’s behalf, the total sum of monies owed to the Firm relating to the Final Arbitration Award is \$640,004.55.

24. To date, Kwok has not voluntarily satisfied the Final Arbitration Award.

25. The Final Arbitration Award should be confirmed and enforced pursuant to CPLR § 7510.

26. There is no basis for vacating or otherwise modifying the Final Arbitration Award, and Respondent cannot sustain any such challenge under CPLR § 7511. *See generally In*

re Government Employees Ins. Co. v. Schussheim, 122 A.D.3d 849, 849–50 (2d Dep’t 2014) (“A party seeking to overturn an arbitration award on one of more grounds stated in [CPLR § 7511] bears a ‘heavy burden.’ The movant has to demonstrate that vacatur is appropriate by clear and convincing evidence.” (citations omitted)).

27. Less than one year has passed since JAMS released the Final Arbitration Award to the parties. (*See* Ex. C, Schiller Affirmation.)

28. No previous request for the relief sought herein has been made to this or any other Court.

RELIEF SOUGHT

WHEREFORE, the Firm requests an Order pursuant to CPLR § 7510:

- i. Confirming the Final Arbitration Award entered in the Arbitration Proceedings;
- ii. Granting judgment in favor of Petitioner, and against Respondent, in the amount of \$640,004.55; and
- iii. Granting such other and further relief as the Court deems just and proper.

Dated: November 20, 2018
New York, New York

Respectfully submitted,

BOIES SCHILLER FLEXNER LLP

By: 

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*Attorneys for Petitioner
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VERIFICATION

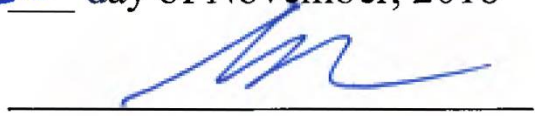
STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

BENJAMIN MARGULIS, being duly sworn, deposes and says as follows:

1. I am an attorney with Boies Schiller Flexner LLP, the petitioner herein.
2. I have read the foregoing Verified Petition and know the contents thereof; and the same is true to my knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters I believe them to be true.


Benjamin Margulis

Sworn to before me this
20th day of November, 2018



Notary Public

JAMES A. ROSSETTI
Notary Public, State of New York
No. 51-4002038
Qualified in New York County
Commission Expires _____ 7/23/21